

**State of New Hampshire
Office of Licensed Allied Health Professionals
Respiratory Care Practitioners Governing Board
Concord, New Hampshire**

In the Matter of:
Kenneth E. Barbarisi
(Application for Licensure)

ORDER ON APPLICATION DENIAL

The New Hampshire Governing Board of Respiratory Care Practitioners ("Board") received an application for licensure on January 1, 2010 from Kenneth E. Barbarisi ("Mr. Barbarisi" or "Applicant") for the practice respiratory care in the State of New Hampshire. For the following reasons, the Board has voted to **DENY** Mr. Barbarisi's application for licensure.

Background:

The Office of Licensed Allied Health Professionals, Respiratory Care Practitioners Governing Board received an application for licensure from Mr. Barbarisi on January 19, 2010. On this application Mr. Barbarisi marked "No" to "Have you been found guilty or entered a plea of no contest to any felony or misdemeanor?"

On June 22, 2010 the Board received a Federal Bureau of Investigation criminal history record report in which the following was listed:

1. On January 28, 2000 Mr. Barbarisi was charged with "assault-touched to injure", "disorderly conduct - fighting", and "criminal damage-deface". Subsequent to the arrest Mr. Barbarisi was found guilty of "assault - touched to injure for which no sentence was imposed. Found guilty of "disorderly conduct fighting" for which Mr. Barbarisi was fined, given 2 days in jail, and 3 years probation. Found guilty of "Criminal Damage - Deface" for which no sentence was imposed.
2. On March 27, 2002 Mr. Barbarisi was charged with "criminal damage-deface", 2 counts of "disorderly conduct - fighting", and "endangerment". These charges resulted in dismissal of the "criminal damage - deface" and "disorderly conduct - fighting". Mr. Barbarisi was found guilty of "disorderly conduct" for which he received 60 days in jail and 3 years probation. Mr. Barbarisi was further found guilty of "endangerment" for which he received 60 days in jail and 3 years probation.

Relevant Law:

RSA 326-E:3, I:

An applicant for an initial license to practice respiratory care shall be of good professional character.

RSA 328-F:23, II: Misconduct sufficient to support disciplinary proceedings shall include

- (a) Knowingly or negligently providing inaccurate material information to the board or failing to provide complete and truthful material information upon inquiry by the board, including during the process of applying for a license, license renewal, and license reinstatement.
- (b) Any criminal conviction in any jurisdiction, excluding traffic violations, or failure to report such conviction within 30 days.

RSA 328-F:23, V

Each governing board is authorized to deny an application for license renewal or reinstatement as an additional sanction.

Resp 405.01(a):

Misconduct

- (a) Knowingly or negligently providing inaccurate material information to the board or failing to provide complete and truthful material information upon inquiry by the board, including during the process of applying for a license, license renewal, or license reinstatement;

Resp 405.01(c):

- (c) Violation of the ethical standards adopted by the board;

AARC Ethics and Professional Conduct:

- Demonstrate behavior that reflects integrity, supports objectivity, and fosters trust in the profession and its professionals
- Refuse to participate in illegal or unethical acts.

Findings of Fact and Rulings of Law:

- The Board finds Mr. Barbarisi knowingly submitted a signed application for licensure to the Board on January 19, 2010 which clearly stated that he had not been found guilty or entered a plea of no contest to any felony or misdemeanor when in fact he had done so. Mr. Barbarisi's January 28, 2000 arrest resulted in

convictions for "assault-touched to injure", "disorderly conduct - fighting", and "criminal damage-deface". Mr. Barbarisi's March 27, 2002 arrest resulted in convictions for "disorderly conduct" and "endangerment". The Board finds that Mr. Barbarisi is in violation of RSA 328-F:23, II(a) and Resp 405.01(a) by not indicating these convictions on his application for licensure.

- The Board finds Mr. Barbarisi is not of good professional character as mandated by RSA 326-E:3, I.
- The Board finds Mr. Barbarisi in violation of RSA 328-F:23, II(b), Resp 405.01(c) and the American Association for Respiratory Care Ethics and professional Conduct due to his extensive criminal history.

Conclusion:

For the reasons stated above, and authorized by RSA 328-F:23, V, the Applicant's application for licensure is **DENIED**.

THEREFORE IT IS ORDERED this Order on Application Denial ("Order") will become a 'final order' within fifteen (15) days of the effective date of this Order, as defined further below, unless prior to 4:00 p.m. on the fifteenth day of the effective date of this Order the Board receives a written request for a hearing; and

IT IS FURTHER ORDERED that receipt of a timely filed hearing request shall automatically stay this Order and a further order shall be issued in due course in which the Board establishes a date and time of the hearing, and specifies the issues to be heard; and

IT IS FURTHER ORDERED that any hearing held in response to this Order shall be a non-adjudicatory hearing conducted pursuant to RSA chapter 326-F; RSA chapter 328-F and RSA chapter 541-A. The Applicant may request to be heard on any relevant matter of law or fact, but evidentiary proceedings shall be conducted only to the extent the Applicant has identified disputed factual issues which require resolution. This non-adjudicatory hearing will be conducted in non-public session unless the Applicant makes a timely written request to conduct it in public session. Subsequent to such hearing, the Board will issue a 'final order' within the statutory amount of time; and

IT IS FURTHER ORDERED that by analogy to RSA 318:31, V, a 'final order' is a public document; and

IT IS FURTHER ORDERED that once a Board order is a 'final order' in accordance with either of the circumstances outlines above, the Applicant has thirty (30) days to file a request for reconsideration pursuant to RSA 541:3. Such motion shall comply with RSA 541:4.

IT IS FURTHER ORDERED that this Order shall take effect as an Order of the Board on the date it is signed by an authorized representative of the New Hampshire Governing Board of Respiratory Care Practitioners.

BY ORDER OF THE BOARD

A handwritten signature in black ink, appearing to read "R. G. Fishwick", is written over a horizontal line.

Robert G. Fishwick, RCP, Chair
Respiratory Care Practitioners
Governing Board

October 14, 2010